



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

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Mailed and Filed: SEPTEMBER 22, 2022

IN THE MATTER OF:

Appeal Board No. 623568

PRESENT: RANDALL T. DOUGLAS, MEMBER

In Appeal Board Nos. 623567 and 623568, the claimant appeals from the decisions of the Administrative Law Judge filed May 10, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective April 6, 2020 through May 3, 2020, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation; and sustained the initial determination charging the claimant with an overpayment of \$1,386 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4) and \$1,800 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, as modified to hold the regular unemployment insurance benefits to be nonrecoverable and \$1,800 in FPUC benefits which is recoverable. The decision inadvertently stated that the overpayment of FPUC benefits was modified.

In Appeal Board Nos. 623569 and 623570, the claimant appeals from the decisions of the Administrative Law Judge filed May 10, 2022, insofar as they sustained the initial determination holding the claimant ineligible to receive benefits, effective April 6, 2020 through May 10, 2020, inadvertently recited in the initial determination as May 3, 2020, on the basis that the claimant received vacation or holiday pay, as modified to be one day in the week ending April 12, 2020 and three days in the week ending May 10, 2020; and sustained the initial determination charging the claimant with overpayment of \$504 in regular unemployment insurance benefits recoverable pursuant to Labor Law §

597 (4) , and \$1,200 in Federal Pandemic Unemployment Compensation (FPUC)

benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 as modified to be \$126 in regular unemployment insurance benefits for the week ending April 12, 2020, which is nonrecoverable and \$378 in regular unemployment insurance benefits for the week ending May 10, 2020 which is recoverable, and \$1,200 in FPUC benefits which is recoverable. The decision inadvertently stated the \$1,200 recoverable FPUC overpayment was modified.

In Appeal Board No. 623571 an appeal by the claimant was processed to the Appeal Board from the decision of the Administrative Law Judge filed May 10, 2022, insofar as it overruled the initial determination reducing the claimant's right to receive future benefits by eight effective days and charging a civil penalty of \$255.60 on the basis that the claimant made willful misrepresentations to obtain benefits.

In Appeal Board Nos. 623572, 623573 and 623574, the claimant appeals from the decisions of the Administrative Law Judge filed May 10, 2022, insofar as they sustained the initial determinations holding the claimant ineligible to receive benefits, effective April 13, 2020 through August 2, 2020, on the basis that the claimant was not available for employment; charging the claimant with an overpayment of \$6,804 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), \$7,800 in Federal

Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$300 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits by 88 effective days and charging a civil penalty of \$2,190.60 on the basis that the claimant made willful misrepresentations to obtain benefits. The decision inadvertently stated the ending date of the lack of availability period was August 20, 2020.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

The Board considered the arguments contained in the written statement submitted on behalf of the claimant.

In Appeal Board No. 623571, it now appears that the appeal was processed

through inadvertence. Since the Judge's decision in 022-09013, regarding the issue of willful misrepresentation to obtain benefits, is not adverse to the appellant's interest, the appellant has no standing to appeal from that decision.

In the remaining cases, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made. The findings of fact and the opinion of the Administrative Law Judge are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board

We further find and conclude that when the claimant certified on June 16, 2020 for the week ending May 10, 2020, he stated he was not owed and did not receive vacation pay or holiday pay. However, with respect to the week ending April 12, 2020, there is no evidence that the claimant certified for benefits for that week. Since the claimant did not certify for this week, he did not make a factually false statement or conceal any pertinent fact regarding the issue of vacation pay. The \$126 in regular unemployment insurance benefits

associated with this week is nonrecoverable.

With regard to the issue of willful misrepresentation related to the claimant's availability for employment, we further find and conclude that the claimant is bound by the advice in the handbook, whether read or not. The handbook advised that he could be denied benefits if he was not ready, willing and able to work and that falsely reporting that he was available for work when he could not work due to illness could have a negative effect on his benefits. We are therefore not persuaded by the claimant's contentions regarding his certifications and conclude that his certifications that he was available for work amount to willful misrepresentations.

**DECISION:** In Appeal Board Nos. 623567 and 623568, the decisions of the Administrative Law Judge, insofar as appealed from, are affirmed.

In Appeal Board No. 623567, the initial determination, holding the claimant ineligible to receive benefits, effective April 6, 2020 through May 3, 2020, on the basis that the claimant was not totally unemployed and/or had earnings over the statutory limitation, is sustained.

In Appeal Board No. 623568, the initial determination, charging the claimant

with overpayment of \$1,386 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$1,800 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020 is modified to be \$1,386 in regular unemployment insurance benefits which is nonrecoverable and \$1,800 in FPUC benefits which is recoverable, and, as so modified, is sustained.

In Appeal Board Nos. 623569 and 623570, the decisions of the Administrative Law Judge, insofar as appealed from, are affirmed.

In Appeal Board No. 623569, the initial determination, holding the claimant ineligible to receive benefits, effective April 6, 2020 through May 10, 2020, on the basis that the claimant was on a paid vacation period is modified to be one day in the week ending April 12, 2020 and three days in the week ending May 10, 2020, and, as so modified, is sustained.

In Appeal Board No. 623570, the initial determination, charging the claimant with overpayment of \$504 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4), and \$1,200 in Federal Pandemic

Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, is modified to be \$126 in nonrecoverable regular unemployment insurance benefits for the week ending April 12, 2020 and \$378 in recoverable regular unemployment insurance benefits for the week ending May 10, 2020, and \$1,200 in FPUC benefits, and, as so modified, is sustained.

In Appeal Board No. 623571, the appeal is dismissed.

The decision of the Administrative Law Judge in 022-09013 is continued in effect.

In Appeal Board Nos. 623572, 623573 and 623574, the decisions of the Administrative Law Judge, insofar as appealed from, are affirmed.

In Appeal Board Nos. 623572, 623573 and 623574, the initial determinations holding the claimant ineligible to receive benefits, effective April 13, 2020 through August 2, 2020, on the basis that the claimant was not available for

employment; charging the claimant with an overpayment of \$6,804 in regular unemployment insurance benefits recoverable pursuant to Labor Law § 597 (4),

\$7,800 in Federal Pandemic Unemployment Compensation (FPUC) benefits recoverable pursuant to Section 2104 (f)(2) of the Coronavirus Aid, Relief and Economic Security (CARES) Act of 2020, and \$300 in Lost Wages Assistance (LWA) benefits recoverable pursuant to 44 CFR Sec. 206.120 (f)(5); and reducing the claimant's right to receive future benefits

by 88 effective days and charging a civil penalty of \$2,190.60 on the basis that the claimant made willful misrepresentations to obtain benefits, are sustained.

The claimant is denied benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER